



October 20, 2011

Mr. Jay P. Urwitz
Mr. Sanjay Mody
Wilmerhale
399 Park Avenue
New York, NY 10022-4616

RE: Supplier Disagreement Resolution Case No. SDR11SR-05
Solicitation No. 7GBTNS-10-A-0003

Dear Mr. Urwitz and Mody:

This responds to your supplier disagreement (hereinafter, "Disagreement") on behalf of MTS MMT LLC (MTS) regarding United States Postal Service (USPS) solicitation 7GBTNS-10-A-003 for Mail Sortation/Terminal Handling Services. The referenced solicitation was issued on September 20, 2010. Contract award was made on June 2, and your Disagreement was received by this office on July 8.

The Disagreement is based on two grounds: (1) that the Contracting Officer ("CO") failed to clarify with MTS that the relevant statement of work requirements in the solicitation did not include "095" (or holiday) mail, which alleged failure harmed your proposal and constituted a "fundamental and incurable" error; and (2) that, due to the lack of clarification, the CO's price comparison was improper. Your Disagreement requests that the USPS reverse its earlier decision and award the contract for terminal handling services of military mail to MTS. We will discuss the grounds of your Disagreement in the order presented.

FACT FINDING

For the purposes of fact finding, we met with the CO and met with MTS representative Mr. Roger Comstock and his counsel to discuss the Disagreement.

CONTRACT HISTORY

MTS was the incumbent contractor, having been awarded the base contract on November 1, 2005. This contract ran through October 31, 2010 and had a one-year option. The contract was modified to change the option period to 2 years, and this option was exercised, extending the period of performance from November 1, 2008 through October 3, 2010. Further modifications extended the performance period to July 31. Additional modifications added 095 holiday mail to the contract requirements; the requirements of the base contract did not include 095 holiday mail.

CLARIFICATIONS

In addition to reviewing your Disagreement, we reviewed a number of documents to ascertain the services requested by the solicitation's statement of work and determine whether there was confusion regarding the scope of services being sought. These include: (1) the solicitation's statement of work; (2) the questions and answers arising from the pre-proposal conference (held on October 29, 2010);

(3) MTS' proposal; and (4) the e-mails between the CO and MTS that you provided as exhibits to your Disagreement.

THE SOLICITATION

Solicitation 7GBTNS-10-A-0003 was issued on September 20, 2010. It calls for the delivery of mail to and from United States troops stationed in combat zone areas (Iraq, Afghanistan, and Kuwait). The solicitation contains two statements of work; the first being for terminal handling (mail sortation) services, and the second calling for end-to-end transportation and logistics for processing, transport, and delivery of military mail. As a result of the solicitation, two contracts were awarded – one for the terminal handling services and the other for the end-to-end transportation services. MTS' disagreement concerns the first of these awards (that for terminal handling), and we will address only that statement of work (also referenced as "SOW" or "SOW 1"). A review of the SOW shows that it contains no discussion of types of mail – that is of 093 or 095 mail. Rather, the SOW concerns mail in general.

SOW 1, Terminal Handling (Mail Sortation) Service (THS) provides the scope of services sought by the Postal Service. It addresses a number of requirements, and in section 1.1, Purpose, states the following, in relevant part:

"This statement of work is for Mail Sortation/terminal handling services (THS) necessary to process and prepare pro-grade military mail for air transportation and delivery to various combat destinations in Iraq, Afghanistan, and Kuwait. Services hereunder will include the necessary resource capability, facilities, transport and terminal handling services, and equipment as required."

Section 1.2 Frequency, states, in part:

"Frequency of operation will be daily, with the exceptions of Thanksgiving Day, Christmas Day, and New Year's Day, which will be optional, at the discretion of USPS with advance notification of 24 hours to the supplier.

"Required delivery frequencies and mail volumes are subject to troop activity and may increase or decrease. Additional factors (i.e., seasonality) may also cause volume fluctuations. The supplier must expect fluctuations and have the ability to flex their capabilities to meet service requirements."

Section 1.3.3, Hours of Operation, states, in part:

"The supplier will provide sufficient staffing to support the attached transportation schedules and historical volumes for both peak and non-peak hours of operation."

As noted above, nowhere in the SOW is there a discussion of types of mail, including 093 or 095 mail.

COMMUNICATIONS BETWEEN MTS AND THE CONTRACTING OFFICER/USPS

The Preproposal Conference and Follow-up Qs and As

A preproposal conference was held on October 29, 2010. According to Mr. Comstock, representatives of MTS attended the conference. A review of the conference questions and answers mailed to the conference attendees after the conference does not specifically reference 095 mail,

although there is one question (#27) which asks: "May suppliers submit pricing for peak season separate from non-peak season?" The answer to that question is: "No, pricing offers must be all-inclusive."

Emails between MTS and Contracting Officer

MTS' Disagreement included in the exhibits a series of e-mails exchanged between MTS and the CO during the period of January, 20 – February 14. Some of the MTS e-mails contain "price discounts" which lower MTS' original price. An e-mail from MTS dated January 20 (Exhibit I to Disagreement) states:

"We're combing through our costs to see where we can sharpen the pencil. One item that jumps out is our facility lease. . . . For the 093 mail we don't need nearly that much space. We have the opportunity to sublease a portion of the extra space . . . and reduce our fixed costs however; it would limit our ability to process the other 09 mail during the peak period."

An e-mail from MTS dated January 21 (Exhibit J to Disagreement) states:

"Since we haven't heard back from you on maintaining the space for the other 09 mail during peak, this price assumes that this mail would return to the THS facility for the 2011-2012 peak operating period. Note that our 095 price has not previously included a fixed cost reimbursement for the additional space.

"Please let us know if you do not want us to take 095 mail into consideration."

In a January 31 e-mail (Exhibit M to Disagreement), MTS then offers to provide a discount resulting from removing "fixed costs associated with the excess space we use to process other 09 mail." The space referenced is apparently the same space discussed in the January 20 and January 21 e-mails (Exhibits I and J to Disagreement).

An email from MTS dated February 14 (Exhibit N to Disagreement) states, in pertinent part:

"As part of our commitment to provide the service to the Postal Service, we review volume trends the week before Valentine's Day. We find that the year-over-year analysis of this "mini-peak" gives us an accurate volume forecast. Our review of the years in which we've been performing the contract indicates a downward trend.

"As a result we believe we can consolidate several operational tours throughout the week in the off-peak period and reduce our overhead and labor costs. Based on that analysis, we believe we can reduce our price an additional \$240,246 per year, bringing our proposed annual contract total to \$8,992,142 (based on volume provided in the solicitation).

"I have adjusted the price in the lower tiers (1 through 4) and attached revised pricing documentation.

"Please let me know if you have any questions."

Phone Call between Mr. Comstock and the Contracting Officer

MTS' Disagreement states that Mr. Roger Comstock called the CO on February 11, and "[d]uring that call, Mr. Comstock confirmed again that MTS' price included costs associated with performing the

Holiday Mail Services. Ms. Partridge [the CO] informed Mr. Comstock that USPS had not made a decision yet, but said nothing regarding MTS' inclusion of such costs in its proposal." (Disagreement, page 6).

MTS' GROUNDS FOR DISAGREEMENT

As noted above, MTS' Disagreement is centered on two grounds, and, although they are closely related, we will address each ground in turn.

Clarifications and Discussions

MTS first asserts that the solicitation is fatally flawed due to a lack of communication and clarification on the part of the CO. MTS argues that the CO did not respond to inquiries concerning the scope of the services sought – specifically, whether they included 095 holiday mail – and that this resulted in assumptions on the part of MTS that then led to MTS proposing a higher price than it would have proposed had MTS known that the 095 holiday mail was not included in the solicitation requirements. In his meeting with the SDRO, Mr. Comstock confirmed that MTS' price included the cost of handling the 095 holiday mail and stated that MTS pricing was a blended rate for 095 mail and 093 mail. However, the record does not indicate that this blended pricing was disclosed to the CO. Further, the MTS pricing proposal dated November 5, 2010, Section 7 Assumptions and Constraints states, "MTS makes no assumptions, conditions, or exceptions regarding the terms or conditions contained in solicitation 7GBTNS-10-A-003."

There is no mention of 095 mail in the preproposal Qs and As. In fact, the only reference to 095 mail is in MTS' e-mails between January 20 and January 31. There is no mention of 095 mail in MTS' technical or price proposal. As to the prices contained in the e-mails, it appears that they include costs that MTS added to its price by its own volition – and not associated with SOW requirements – and then lowered as the purchasing process continued. Indeed, in his meeting with the SDRO, Mr. Comstock stated that MTS decided to include the costs of handling the 095 mail in its price proposal.

MTS' request in the January 21 email (Exhibit J to Disagreement) to "[p]lease let us know if you do not want us to take the 095 mail into consideration", appears to be tied to the facility lease costs discussed in the January 20 e-mail (Exhibit I to Disagreement); the request is not phrased as a blanket question concerning the terms of the solicitation and SOW. In other words, the request appears to relate not to the solicitation requirements, but to the cost components MTS appears to have factored into its price.

In the CO's response to the initial disagreement, the CO states that she did maintain communications throughout the purchase process and did not respond to MTS' January 20 e-mail (Exhibit I to Disagreement) because MTS sent an updated email on 1/21/11 (Exhibit J to Disagreement), to which the CO responded on January 22 (Exhibit K to Disagreement). As noted above, MTS contends that, during a conversation on February 11, Mr. Comstock told the CO that MTS' price included "costs associated with performing the Holiday Mail Services." (Disagreement, page 6). However, in her decision on MTS' initial disagreement, the CO agrees that the conversation took place but states that the subject of 095 mail was not discussed.

Further, as detailed above, the former contract between USPS and MTS for terminal handling services included 095 mail only through contract modifications. Handling of the 095 mail was not included in the requirements of the base contract. Nevertheless, and absent any positive indicator that the SOW requirements included the 095 mail, MTS priced its proposal to include it.

It is the responsibility of the offeror to familiarize itself with the solicitation's requirements and make an offer that responds to those requirements. Unless the CO issues specific instructions otherwise via solicitation amendment, the original terms of the solicitation remain those on which suppliers should base their proposals. In this case, the solicitation's terms were clear, and offerors were expected to respond to them. The solicitation SOW made no mention of 095 mail, and there was no solicitation amendment changing the requirements of the SOW. Further, MTS did not disclose its blended pricing to the CO, despite the many communications—detailed above—between the CO and MTS during the solicitation process. Nothing in those communications reveals a misunderstanding of the solicitation requirements on the part of MTS, particularly in light of MTS' affirmative assertion in its February 14 e-mail that its price was "based on volume provided in the solicitation" (Exhibit N to Disagreement). Therefore, I find that the CO had no duty to issue a clarification or seek to otherwise correct MTS' apparent misunderstanding of the solicitation requirements. The CO reasonably concluded that MTS' final proposal excluded 095 mail in response to those requirements.

Price Comparison

As a second ground for its Disagreement, MTS asserts that USPS' comparison of the price stated in MTS' proposal with the price stated in the awardee's proposal was improper, since MTS' proposed price included costs associated with 095 mail based on MTS' mistaken assumption that the solicitation requirements included 095 mail. MTS asserts that this assumption—which MTS contends the CO should have corrected—led MTS to propose a price higher than MTS would have otherwise proposed. MTS further contends that the CO should have adjusted the price stated in MTS' final proposal to account for the fact that its proposal included the operating costs of handling the 095 mail, while the awardee's did not.

MTS' argument presupposes that a lack of communication on the part of the CO, as alleged by MTS, induced MTS to include the 095 mail in its price computation and offer. However, as the February 14 e-mail (Exhibit N to Disagreement) from MTS and other evidence in the record indicates, the CO reasonably concluded that MTS' proposed price was based on the volume provided in the solicitation. This is the same volume upon which all other offerors based their pricing. Therefore, regardless of any assumptions on the part of MTS regarding inclusion of 095 mail in its proposal, MTS was not at a competitive disadvantage, and the price it proposed was properly compared to its competitors' proposed prices.

After considering all information provided by the CO and MTS, and after having conducted a thorough review of the record, I have determined that the CO's award decision resulted in the USPS obtaining best value. Therefore, your Disagreement is denied.

Sincerely,



Trent Ensley
USPS Supplier Disagreement Resolution Official

bcc: Susan Brownell
Jacqui Skoglund
Susan Partridge
Dwight Young
McGinn